

BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of Petition for Reinstatement
of:

OAH No. 2012080814

VICTORIA AKINNITIRE,

Petitioner.

DECISION

This matter was heard by a quorum of the Board of Vocational Nursing and Psychiatric Technicians (Board) on September 5, 2012, in Los Angeles, California. Administrative Law Judge Amy C. Yerkey, State of California, Office of Administrative Hearings, presided.

Victoria Akinnitire (Petitioner) represented herself.

Armando Zambrano, Deputy Attorney General, appeared for the Attorney General pursuant to Government Code section 11522.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision.

FACTUAL FINDINGS

1. Petitioner filed the Petition for Reinstatement on August 24, 2012.
2. On February 22, 2000, the Board issued Vocational Nurse License No. 190784 to Petitioner.
3. The Board revoked Petitioner's license, effective January 8, 2007. The revocation was based on Petitioner's unprofessional conduct, gross negligence and incompetence when she failed to follow cardiopulmonary resuscitation (CPR) techniques.

4. In brief, Petitioner was assigned to provide in-home nursing care for an infant who used a ventilator, had tracheotomy ties, and a gastronomy tube. During one of her nursing shifts, Petitioner placed the infant into a bouncer seat, left the room and made a phone call. During that time, the infant went into respiratory distress. When Petitioner discovered the infant was not breathing, she became hysterical and incoherent. The infant's mother subsequently arrived and performed CPR while Petitioner ran around and screamed. Although the infant's mother was able to resuscitate him, the infant was hospitalized for three months and suffered cortical atrophy as a result of the incident.

5. Petitioner presented minimal evidence of rehabilitation. Petitioner did not initially admit that she lost control or panicked. At the hearing on her Petition, she acknowledged that she lost control of her emotions. Petitioner also expressed regret and took responsibility for the incident. Petitioner denied lying to Board investigators despite a finding to the contrary in the Decision which revoked her license. Petitioner has taken CPR and other classes to refresh her knowledge. She has also coped with family and other personal tragedies. When asked how she has rehabilitated herself to better cope with her emotions, Petitioner failed to articulate assurances which demonstrate her capability to appropriately handle emergency situations.

LEGAL CONCLUSIONS

1. Government Code section 11522 provides in part:

A person whose license has been revoked . . . may petition the agency for . . . reduction of penalty . . . The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor, and any terms and conditions that the agency reasonably deems appropriate to impose as a condition of reinstatement. This section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

2. Business and Professions Code section 2878.7 provides in part:

(a) A person whose license has been . . . placed on probation, may petition the board for reinstatement or modification of the penalty, including . . . termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the disciplinary order or if any portion of the order is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for the reinstatement of a license that was revoked or surrendered, except that the

board may, in its sole discretion, specify in its order a lesser period of time, which shall be no less than one year, to petition for reinstatement.

[¶] . . . [¶]

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The board . . . shall hear the petition and shall prepare a written decision setting forth the reasons supporting the decision.

(d) The board may grant or deny the petition or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

Regulatory Authority

3. California Code of Regulations, title 16, section 2522 provides:

When considering a) the denial of a license under Section 480 of the Business and Professions Code, b) the suspension or revocation of a license on the ground that a licensee has been convicted of a crime, or c) a petition for reinstatement of a license under Section 2787.7 of the Business and Professions Code, the Board in evaluating the rehabilitation of an individual and his or her present eligibility for a license, will consider the following criteria:

- (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.
- (2) Actual or potential harm to the public.
- (3) Actual or potential harm to any patient.
- (4) Overall disciplinary record.
- (5) Overall criminal actions taken by any federal, state or local agency or court.
- (6) Prior warnings on record or prior remediation.

- (7) Number and/or variety of current violations.
- (8) Mitigation evidence.
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation.
- (10) Time passed since the act(s) or offense(s) occurred.
- (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to Penal Code section 1203.4.
- (12) Cooperation with the Board and other law enforcement or regulatory agencies.
- (13) Other rehabilitation evidence.

Burden and Standard of Proof

4. Business and Professions Code section 2878.7, subdivision (b) specifically provides that the “petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.”

5. The statutory burden and standard of proof imposed upon petitioner is consistent with the burden and standard imposed in other reinstatement proceedings (See, *Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315; *Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

Relevant Factors in Determining Rehabilitation

6. Rehabilitation is a state of mind. The law looks favorable upon “one who has achieved reformation and regeneration” by rewarding them with the opportunity to serve. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157) (Citations and internal quotations omitted.) Cases authorizing reinstatement to a professional practice commonly involve a substantial period of exemplary conduct following the applicant’s misdeeds. The more serious the misconduct, the stronger the applicant’s showing of rehabilitation must be. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

Cause Was Not Established

7. Based on all of the foregoing Findings of Fact and Legal Conclusions, Petitioner has failed to meet her burden of proof to establish that her vocational nurse license should be reinstated.

ORDER

The Petition for Reinstatement filed by Victoria Akinnitire is denied.

DATED: NOV 06, 2012

Effective Date: NOV 21, 2012



TODD D'BRAUNSTEIN
President
BOARD OF VOCATIONAL NURSING
AND PSYCHIATRIC TECHNICIANS